

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ZENIMAX MEDIA INC. and  
ID SOFTWARE LLC,

Plaintiffs,

V.

OCULUS VR, LLC,  
PALMER LUCKEY,  
and FACEBOOK, INC.

Defendants.



**CIVIL CASE NO. 3:14-cv-01849-P**

**PLAINTIFFS' APPENDIX TO THEIR SUR-REPLY IN FURTHER  
OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER**

<b><u>DOCUMENT</u></b>	<b><u>EXHIBIT</u></b>	<b><u>PAGE(S)</u></b>
Emails Between Counsel For The Parties Regarding Further Deposition Scheduling (highlighted)	1	1-8

Dated: November 16, 2015

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(the foregoing attorneys admitted *pro hac vice*)  
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Respectfully submitted,

s/ Phillip B. Philbin  
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*Attorneys for Plaintiffs  
ZeniMax Media Inc. and id Software LLC*

**CERTIFICATE OF SERVICE**

On November 16, 2015, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Dated: November 16, 2015

*s/ Phillip B. Philbin*

Phillip B. Philbin

# EXHIBIT 1

---

**From:** Caplan, Matthew D. <mcaplan@cooley.com>  
**Sent:** Wednesday, November 11, 2015 4:12 PM  
**To:** Kothari, Devin A (NYC); Sammi, P. Anthony (NYC); 'rhodesmg@cooley.com'; 'stephen.smith@cooley.com'; 'mcaplan@cooley.com'; 'hkeefe@cooley.com'; 'mweinstein@cooley.com'; 'lstameshkin@cooley.com'; 'jwoodring@cooley.com'; 'FacebookOculusZenimaxMediaInc@cooley.com'; 'eryan@lynnllp.com'; 'richard@rsmithpc.com'  
**Cc:** Project ZeniMax IP DL; phillip.philbin@haynesboone.com; Karson, Michael <Michael.Karson@haynesboone.com> (Michael.Karson@haynesboone.com)  
**Subject:** RE: ZMI v. FB/OVR/Luckey: Further Deposition Scheduling (Jan 2016)

Counsel,

Dov Katz is available for his deposition on January 15. Please let us know if that works for you.

Thanks,

Matt

**Matt Caplan**

Cooley LLP  
101 California Street • 5th Floor  
San Francisco, CA 94111-5800  
Direct: +1 415 693 2164 • Fax: +1 415 693 2222 • Cell: +1 310 528 1361  
Bio: [www.cooley.com/mcaplan](http://www.cooley.com/mcaplan) • Practice: [www.cooley.com/litigation](http://www.cooley.com/litigation)

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**From:** Caplan, Matthew D.  
**Sent:** Wednesday, November 11, 2015 12:22 PM  
**To:** Kothari, Devin A; Sammi, P. Anthony; 'rhodesmg@cooley.com'; 'stephen.smith@cooley.com'; 'mcaplan@cooley.com'; 'hkeefe@cooley.com'; 'mweinstein@cooley.com'; 'lstameshkin@cooley.com'; 'jwoodring@cooley.com'; 'FacebookOculusZenimaxMediaInc@cooley.com'; 'eryan@lynnllp.com'; 'richard@rsmithpc.com'  
**Cc:** DLPZENIMAX@skadden.com; phillip.philbin@haynesboone.com; Karson, Michael <Michael.Karson@haynesboone.com> (Michael.Karson@haynesboone.com)  
**Subject:** RE: ZMI v. FB/OVR/Luckey: Further Deposition Scheduling (Jan 2016)

Devin,

We will see if Brant Lewis is available on December 14.

As for Palmer Luckey and Brendan Iribe, we would prefer to move forward on the dates we provided to you (as the witnesses and counsel on our end are available), and will work with you to schedule the other depositions around those dates. To that end, we will either confirm the dates in the notices you served last week or provide you with alternative dates as soon as we can.

Best,

Matt

**Matt Caplan**

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**From:** Kothari, Devin A [<mailto:Devin.Kothari@skadden.com>]  
**Sent:** Wednesday, November 11, 2015 9:49 AM  
**To:** Caplan, Matthew D.; Sammi, P. Anthony; 'rhodesmg@cooley.com'; 'stephen.smith@cooley.com'; 'mcaplan@cooley.com'; 'hkeefe@cooley.com'; 'mweinstein@cooley.com'; 'lstameshkin@cooley.com'; 'jwoodring@cooley.com'; 'FacebookOculusZenimaxMediaInc@cooley.com'; 'eryan@lynnllp.com'; 'richard@rsmithpc.com'  
**Cc:** [DLPZENIMAX@skadden.com](mailto:DLPZENIMAX@skadden.com); [phillip.philbin@haynesboone.com](mailto:phillip.philbin@haynesboone.com); Karson, Michael <[Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com)> ([Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com))  
**Subject:** RE: ZMI v. FB/OVR/Luckey: Further Deposition Scheduling (Jan 2016)

Matt,

A couple of notes on deposition scheduling:

- Brant Lewis. Our schedules have shifted, and we are no longer available to take the deposition of Brant Lewis on December 4. Please let us know if Mr. Lewis is available for deposition on December 14.
- Brendan Iribe. We understand that Mr. Iribe has a number of obligations currently on his schedule, but we would appreciate if you could produce him for deposition at an earlier date. Please let us know if he could be presented for deposition in December or January.
- Palmer Luckey / January Depositions. We have noticed a number of depositions in January. Can you please confirm those dates, or provide alternates? Currently, your proposed date for Palmer Luckey (January 26) is sandwiched between dates for two other witnesses we have noticed. If those dates stand, please provide a date for Mr. Luckey in early February.

Regards,

**Devin A. Kothari**  
**Skadden, Arps, Slate, Meagher & Flom LLP**  
Four Times Square | New York | 10036-6522  
T: 212.735.2932 | F: 917.777.2932  
[devin.kothari@skadden.com](mailto:devin.kothari@skadden.com)

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**From:** Caplan, Matthew D. [<mailto:mcaplan@cooley.com>]  
**Sent:** Friday, November 06, 2015 11:55 AM  
**To:** Kothari, Devin A (NYC); Sammi, P. Anthony (NYC); 'rhodesmg@cooley.com'; 'stephen.smith@cooley.com'; 'mcaplan@cooley.com'; 'hkeefe@cooley.com'; 'mweinstein@cooley.com'; 'lstameshkin@cooley.com'; 'jwoodring@cooley.com'; 'FacebookOculusZenimaxMediaInc@cooley.com'; 'eryan@lynnllp.com'; 'richard@rsmithpc.com'  
**Cc:** Project ZeniMax IP DL; [phillip.philbin@haynesboone.com](mailto:phillip.philbin@haynesboone.com); Karson, Michael <[Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com)> ([Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com))  
**Subject:** RE: ZMI v. FB/OVR/Luckey: Further Deposition Scheduling (Jan 2016)

Counsel,

Brant Lewis is available for deposition on December 4. Please let us know if that works.

**Matt Caplan**  
Cooley LLP  
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Bio: [www.cooley.com/mcaplan](http://www.cooley.com/mcaplan) • Practice: [www.cooley.com/litigation](http://www.cooley.com/litigation)

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**From:** Kothari, Devin A [<mailto:Devin.Kothari@skadden.com>]

**Sent:** Friday, November 06, 2015 8:45 AM

**To:** Caplan, Matthew D.; Sammi, P. Anthony; 'rhodesmg@cooley.com'; 'stephen.smith@cooley.com'; 'mcaplan@cooley.com'; 'hkeefe@cooley.com'; 'mweinstein@cooley.com'; 'lstameshkin@cooley.com'; 'jwoodring@cooley.com'; 'FacebookOculusZenimaxMediaInc@cooley.com'; 'eryan@lynnllp.com'; 'richard@rsmithpc.com'

**Cc:** [DLPZENIMAX@skadden.com](mailto:DLPZENIMAX@skadden.com); [phillip.philbin@haynesboone.com](mailto:phillip.philbin@haynesboone.com); Karson, Michael <[Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com)> ([Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com))

**Subject:** RE: ZMI v. FB/OVR/Luckey: Further Deposition Scheduling (Jan 2016)

Matt,

We are checking our schedules for Mr. Iribe and Mr. Malamed, and will get back to you. Please let us know if you will be proposing dates for Mr. Zuckerberg and Mr. Luckey.

Regards,

**Devin A. Kothari**

**Skadden, Arps, Slate, Meagher & Flom LLP**

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**From:** Caplan, Matthew D. [<mailto:mcaplan@cooley.com>]

**Sent:** Thursday, November 05, 2015 6:41 PM

**To:** Kothari, Devin A (NYC); Sammi, P. Anthony (NYC); 'rhodesmg@cooley.com'; 'stephen.smith@cooley.com'; 'mcaplan@cooley.com'; 'hkeefe@cooley.com'; 'mweinstein@cooley.com'; 'lstameshkin@cooley.com'; 'jwoodring@cooley.com'; 'FacebookOculusZenimaxMediaInc@cooley.com'; 'eryan@lynnllp.com'; 'richard@rsmithpc.com'

**Cc:** Project ZeniMax IP DL; [phillip.philbin@haynesboone.com](mailto:phillip.philbin@haynesboone.com); Karson, Michael <[Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com)> ([Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com))

**Subject:** RE: ZMI v. FB/OVR/Luckey: Further Deposition Scheduling (Jan 2016)

Counsel,

Laird Malamed can appear for deposition on February 10, 2016.

**Matt Caplan**

Cooley LLP

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Bio: [www.cooley.com/mcaplan](http://www.cooley.com/mcaplan) • Practice: [www.cooley.com/litigation](http://www.cooley.com/litigation)

---

**From:** Kothari, Devin A [<mailto:Devin.Kothari@skadden.com>]

**Sent:** Wednesday, November 04, 2015 4:21 PM

**To:** Caplan, Matthew D.; Sammi, P. Anthony; 'rhodesmg@cooley.com'; 'stephen.smith@cooley.com'; 'mcaplan@cooley.com'; 'hkeefe@cooley.com'; 'mweinstein@cooley.com'; 'lstameshkin@cooley.com'; 'jwoodring@cooley.com'; 'FacebookOculusZenimaxMediaInc@cooley.com'; 'eryan@lynnllp.com'; 'richard@rsmithpc.com'

**Cc:** [DLPZENIMAX@skadden.com](mailto:DLPZENIMAX@skadden.com); [phillip.philbin@haynesboone.com](mailto:phillip.philbin@haynesboone.com); Karson, Michael <[Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com)> ([Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com))

**Subject:** RE: ZMI v. FB/OVR/Luckey: Further Deposition Scheduling (Jan 2016)

Matt,

Regarding Mr. Lewis, the proposed December 15 date is unlikely to work for us. However, we will not stand on our notice, and ask that you provide alternate dates for December or January.

Regards,

**Devin A. Kothari**

**Skadden, Arps, Slate, Meagher & Flom LLP**

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T: 212.735.2932 | F: 917.777.2932

[devin.kothari@skadden.com](mailto:devin.kothari@skadden.com)

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**From:** Kothari, Devin A (NYC)

**Sent:** Wednesday, November 04, 2015 11:27 AM

**To:** 'Caplan, Matthew D.'; Sammi, P. Anthony (NYC); 'rhodesmg@cooley.com'; 'stephen.smith@cooley.com'; 'mcaplan@cooley.com'; 'hkeefe@cooley.com'; 'mweinstein@cooley.com'; 'lstameshkin@cooley.com'; 'jwoodring@cooley.com'; 'FacebookOculusZenimaxMediaInc@cooley.com'; 'eryan@lynnllp.com'; 'richard@rsmithpc.com'

**Cc:** Project ZeniMax IP DL; [phillip.philbin@haynesboone.com](mailto:phillip.philbin@haynesboone.com); Karson, Michael <[Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com)> ([Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com))

**Subject:** RE: ZMI v. FB/OVR/Luckey: Further Deposition Scheduling (Jan 2016)

Matt,

We can confirm Mr. Marten on December 2. We will follow up about our availability for Mr. Lewis.

Regards,

**Devin A. Kothari**

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---

**From:** Caplan, Matthew D. [<mailto:mcaplan@cooley.com>]

**Sent:** Tuesday, November 03, 2015 7:07 PM

**To:** Sammi, P. Anthony (NYC); 'rhodesmg@cooley.com'; 'stephen.smith@cooley.com'; 'mcaplan@cooley.com'; 'hkeefe@cooley.com'; 'mweinstein@cooley.com'; 'lstameshkin@cooley.com'; 'jwoodring@cooley.com'; 'FacebookOculusZenimaxMediaInc@cooley.com'; 'eryan@lynnllp.com'; 'richard@rsmithpc.com'

**Cc:** Project ZeniMax IP DL; [phillip.philbin@haynesboone.com](mailto:phillip.philbin@haynesboone.com); Karson, Michael <[Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com)> ([Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com))

**Subject:** RE: ZMI v. FB/OVR/Luckey: Further Deposition Scheduling (Jan 2016)

Tony,

We are working on dates for these witnesses with our clients.

We can offer Brant Lewis on December 15. Please let us know if that works, and also let us know about Brendan Marten on December 2.

Thanks,

Matt

**Matt Caplan**



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---

**From:** Sammi, P. Anthony [<mailto:Anthony.Sammi@skadden.com>]  
**Sent:** Tuesday, November 03, 2015 11:03 AM  
**To:** 'rhodesmg@cooley.com'; 'stephen.smith@cooley.com'; 'mcaplan@cooley.com'; 'hkeefe@cooley.com'; 'mweinstein@cooley.com'; 'lstameshkin@cooley.com'; 'jwoodring@cooley.com'; 'FacebookOculusZenimaxMediaInc@cooley.com'; 'eryan@lynnllp.com'; 'richard@rsmithpc.com'  
**Cc:** [DLPZENIMAX@skadden.com](mailto:DLPZENIMAX@skadden.com); [phillip.philbin@haynesboone.com](mailto:phillip.philbin@haynesboone.com); Karson, Michael  
<[Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com)> ([Michael.Karson@haynesboone.com](mailto:Michael.Karson@haynesboone.com))  
**Subject:** ZMI v. FB/OVR/Luckey: Further Deposition Scheduling (Jan 2016)

Mike,

Attached is an updated deposition calendar that includes January 2016. I've also included associated deposition notices for witnesses in January. As before, while we would like these dates, they are placeholders and I again offer you a calendar to mark up and return. In other words, if any of the dates on the calendar for any of your witnesses work, please confirm, and if any dates don't work please provide alternative dates as soon as practicable. I look forward to working with you to continue scheduling depositions.

We confirm Mr. Zoufonoun on Jan 19, 2016 (and have indicated as such on the calendar), thank you. We will revert on whether Dec. 2 works for us for Mr. Marten.

Regards,  
Tony

**P. Anthony Sammi**  
Partner  
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T: 212.735.2307 | F: 917.777.2307  
[anthony.sammi@skadden.com](mailto:anthony.sammi@skadden.com)

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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